

**STATEMENT OF DONALD J. BARRY,  
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INTERIOR,  
BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS,  
CONCERNING S.2102, A BILL TO PROVIDE FOR THE ESTABLISHMENT OF A  
HOMELAND FOR THE TIMBISHA SHOSHONE TRIBE INSIDE AND OUTSIDE DEATH  
VALLEY NATIONAL PARK AND FOR OTHER PURPOSES.**

March 21, 2000

Thank you for the opportunity to present the Department of the Interior's views on S.2102, a bill to provide a land base, or homeland, for the Timbisha Shoshone Tribe inside and outside Death Valley National Park. The Department supports this bill, with amendments, as it would provide a comprehensive integrated plan to establish a permanent homeland for the tribe sufficient to meet its needs into the future.

For thousands of years, the Timbisha Shoshone Tribe has lived in its ancestral homelands in the Mojave Desert, much of which is now in Death Valley National Park. The Timbisha are integrally tied to this land. Since 1850 the Timbisha have been dislocated from this land, first by homesteaders and ranchers, and later by mining interests. In 1933 President Hoover established Death Valley National Monument by executive proclamation under the Antiquities Act. The order creating the Monument was silent on the question of the Timbisha Shoshone land tenure. To address this situation, the National Park Service and the Bureau of Indian Affairs entered into an agreement to establish the Timbisha Shoshone village and to construct adobe residences in the Furnace Creek Area of the Monument. Unable to continue caring for their land within this unit of the park system, and with limited economic opportunities in the area, many Timbisha families left the area. Today, about 50 tribal members live in seven adobe residences and eleven mobile residences at Furnace Creek.

In 1994, as part of the California Desert Protection Act, Congress recognized the hardships the Timbisha have endured by requiring the Secretary of the Interior to study and identify lands that would be suitable for a reservation for the Timbisha Shoshone Tribe. A suitability study was conducted on a government-to-government basis with representatives of the Timbisha Tribe and the Department of the Interior. This joint federal-tribal negotiating team developed a comprehensive plan to establish a homeland for the tribe. S.2102 would implement the recommendations of this plan. The Department of Interior is currently preparing a legislative Environmental Impact Statement which will analyze the potential environment effects of this proposed land transfer.

S.2102 would transfer five parcels of land, which contain 7,540 acres, in trust to the Timbisha Tribe. These parcels would constitute a discontinuous reservation for the tribe. This is appropriate, given the desert environment in which essential resources like water are scarce and separated by vast distances. The existence of mining claims, the availability of infrastructure such as roads, power, and other services, and the fact that much of the land in this area has special resource designations, have resulted in the identification of several parcels to meet tribal needs, rather than a single contiguous parcel. In addition, a discontinuous reservation mirrors the way the Timbisha Shoshone people historically used their ancestral homelands, which covered more than eleven million acres. They used highlands during the hot summers and the valley floors in the cooler winters while drawing on a wide range of resources for sustenance. The parcels identified in S.2102 as the tribe's proposed reservation represent many of the historical areas used traditionally by the tribe.

S.2102 would transfer into trust for the benefit of the Timbisha Shoshone approximately 300 acres of Furnace Creek in Death Valley National Park, and 7,240 acres of land close to the park, located in California and Nevada and currently under the administration of the Bureau of Land Management (BLM). The bill also authorizes the purchase of two additional properties now in private ownership, to be taken into

trust for the tribe. Each of these lands is located within the ancestral homeland of the Timbisha Shoshone Tribe, and each is of particular historical, cultural, or spiritual significance.

Over 95 percent of the acreage to be taken into trust for the Timbisha is presently under the jurisdiction of the BLM. The acreage is to be transferred in four parcels, which are located in Centennial, California; Death Valley Junction, California; Scotty's Junction, Nevada; and Lida, Nevada. While the current California Desert Conservation Protection Plan specifies that the Centennial and Death Valley junction parcels are to be retained by BLM, the BLM now believes, based on its analysis of the current uses and resource values, that these parcels are suitable for legislative transfer to the tribe. Each of the 2,800 acre parcels located in Scotty's Junction and Lida, Nevada, have been classified as suitable for disposal in BLM management plans. The parcel at Scott's Junction is suitable for tribal residences, or development. The parcel at Lida, Nevada, is an area that once had five traditional Timbisha villages, and continues to be used by the tribe. It is also suitable for residences and economic development. The 640-acre parcel at Centennial, California, lies to the west of Death Valley National Park, and would preserve a tribal presence on the western edge of its ancestral homelands. It is suitable for residences. The 1,000-acre parcel at Death Valley Junction, California, is located at the main entrance to the park and is suitable for economic development and residences.

S.2102 also authorizes the acquisition of the privately-owned 2,430-acre Lida Ranch, in Lida, Nevada, and the 120-acre Indian Rancheria Site, in Saline Valley, California.

The land that is central to the Timbisha's present-day existence is the 300-acre parcel at Furnace Creek, Death Valley National Park. This site is the current home of the Timbisha, and has the potential for modest economic development. This potential is recognized by Section 5(b)(2) of S.2102, which would allow the Timbisha to construct and operate a small to moderate desert inn and a tribal museum on this

land. S.2102 also allows for the construction of residences and a community center at Furnace Creek, while recognizing the need to ensure the protection of national park resources.

Section 5(d) (4) of S.2102 authorizes the National Park Service and the Bureau of Land Management to designate certain areas for nonexclusive special uses subject to Federal law. This section creates a unique partnership between the Timbisha Shoshone and federal land managers and encourages collaborative efforts to learn from the tribe's traditional knowledge of the area. These areas would remain in federal ownership, and applicable laws relating to wilderness, endangered species, and cultural resources would remain in force. Tribal members would use these areas for low-impact, ecologically sustainable, traditional practices pursuant to jointly established management plans. The allowed traditional uses of the tribe would not include the taking of wildlife within Death Valley National Park.

Two special use areas are located near the proposed tribal trust land at Furnace Creek in the park. S.2102 provides for a buffer zone of approximately 1,500 acres between Highway 190 and the trust parcel and between the trust parcel and the inholding development at Furnace Creek. This area would be managed by the National Park Service to ensure that the tribe is able to conduct its community affairs M'diout undue disruption from the public. The Mesquite Use area of approximately 2,000 acres surrounds the western and southern boundaries of the trust parcel at Furnace Creek. The tribe would use this area for processing mesquite, a key element of their traditional diet, and manage the area using traditional plant management practices. This area would be managed subject to a cooperative agreement between the National Park Service and the tribe for the traditional uses of mesquite in a sustainable fashion.

The proposed special use area called the Timbisha Shoshone Natural and Cultural Preservation Area encompasses nearly one-half of Death Valley National Park. It is located primarily within the Park, although it includes a small area in California managed by the BLM. We support this designation as it

recognizes the tribe's contributions to the history, culture, and ecology of the region and the inherent value of the tribe's continued presence in the Park. Consistent with such designation, the Secretary would be directed to permit the tribe's continued use of park resources for traditional tribal purposes, practices and activities, as defined in a jointly established management plan. Within this large area, two smaller areas would be designated for special tribal uses, one at Wildrose, and the other at Hunter Mountain. Portions of these areas are not designated wilderness areas. Wildrose was an area that the Tribe used for seasonal residence to escape the summer heat, and for the harvest and processing of pinyon nut which continue to be important in the tribal diet. The bill provides for a tribal resource management office, a garage and storage facility at Wildrose within the area of the existing ranger station, and for traditional use camps at areas agreed to by the tribe and the National Park Service. Hunter Mountain is an important ceremonial area containing burials and sacred sites. The bill provides for traditional use camps at Hunter Mountain, also in non-wilderness locations agreed to by the tribe and the National Park Service.

In addition, the bill provides for access by tribal members to the park without fee admission payment, government-to-government agreements to establish cooperative partnerships and protocols for the review of planned development within the park. The agencies would be authorized to provide training and technical assistance to the tribe, and to provide preferential hiring to qualified members of the tribe.

S.2102 provides that all of the parcels taken into trust would constitute the initial reservation of the Timbisha Shoshone Tribe under the Indian Gaming Regulatory Act. Consequently, class II gaming, commonly known as bingo, could occur on the parcels if the state in which the parcel is located permits such gaming and the tribe has a gaming ordinance approved by the National Indian Gaming Commission. Class III gaming, commonly known as casino gaming, can occur on these parcels only if (1) class III gaming is permitted by the state, (2) the tribe has a gaming ordinance approved by the National Indian Gaming Commission, and (3) the tribe and the governor of the state within which

the parcel is located successfully negotiate a gaming compact.

The effect of this would be to require the Timbisha to negotiate a compact with either California or Nevada if it wished to conduct class III gaming on lands located in those states. The Timbisha Shoshone Tribe would be able to conduct class II gaming without federal approval and the concurrence of the governor of the state in which the Indian lands are located if the State otherwise permits such gaming by any person or organization and the Timbisha Shoshone Tribe has an ordinance approved by the National Indian Gaming Commission.

S.2102 also provides for a prohibition on gaming on the Furnace Creek parcel within Death Valley National Park. This prohibition is consistent with the agreement the Department negotiated with the Timbisha Shoshone Tribe during our study process. Both the Tribe and Department agreed that gaming on the Furnace creek parcel would be inconsistent with tribal and park purposes and values. We are recommending that Section 7(c) of S.2102 be amended to make it clear that the Furnace Creek parcel would not be considered part of the Timbisha Shoshone's "initial reservation" for purposes of gaming under the Indian Gaming Regulatory Act.

The Department strongly supports S.2102. The bill would create a foundation for the tribe to live in a modern community and to exercise its right to self-determination within the boundaries of the largest national park in the "lower 48." The bill also recognizes that the interests of the tribe and the National Park Service would be enhanced by recognizing their coexistence on the same land and by establishing partnerships for compatible land uses. Quite simply, we believe that this bill would create the foundation for a better park -- a park in which the contributions of the tribe to the history, culture and ecology of the region are recognized and interpreted in ways not now possible.

At the same time, we believe that S.2102 provides sufficient safeguards that ensure that the resources of Death Valley National Park will be protected.

The Timbisha Shoshone Tribe deserves a homeland within which it can exercise its inherent right of self-governance and provide a decent standard of living for its people. The American people will benefit as the human history of Death Valley National Park becomes more fully expressed through a renewed and vibrant tribal presence. And finally, this bill establishes a firm foundation for cooperative, collaborative, partnerships among governments which can only enrich our American heritage.

We recommend amendments to the bill on issues relating to wildlife and gaming prohibitions on land within Death Valley National Park, Public Law 280, and on federal reserved water rights. The Department's amendment on wildlife clarifies that Timbisha traditional purposes, practices, and activities in the special use areas that would be created in the park does not include the taking of wildlife. The Department's amendment on Public Law 280 would clarify that § 7(d) applies only to the trust lands located in California proposed for transfer by S.2102. The Department and the Timbisha Shoshone are currently working on issues related to federal reserved water rights including the possibility of quantification at each parcel to be taken into trust for the tribe. We will continue to work on these issues in consultation with the State of Nevada and California and will provide a proposed amendment once these negotiations are completed. We understand that the Department of Justice is also reviewing this bill and may provide its views on provisions dealing with law enforcement, water rights, and other issues in the near future. We will be happy to work with the committee staff on developing this language.

This concludes my testimony. I would be happy to answer any of your questions.